

Searching Passengers of a Vehicle, Based Upon a Positive K-9 Alert

By Terry Fleck

Under Federal law, when the canine has a positive canine alert to the exterior of the vehicle, the handler has probable cause to:

1. Arrest the driver, as there is a fair probability that the driver has direct control and possession of contraband:

United States v Garza (980 F. 2d 546 (1992) Ninth Circuit

Probable cause exists when under the totality of circumstances known to the arresting officer, a prudent person would have concluded that there was a fair probability that the defendant had committed a crime.

Law enforcement officers may draw upon their experience in determining the existence of probable cause. Thus, seemingly innocent conduct may provide the basis for probable cause when viewed in light of all of the information known at the time of the arrest.

The arresting officer need not have personal knowledge of the facts sufficient to constitute probable cause. Probable cause may be based on the collective knowledge of all of the officers involved in the investigation and all of the reasonable inferences that may be drawn therefrom.

You now search the driver incident to arrest:

Chimel v California (395 U.S. 752 (1969) U. S. Supreme Court

You may search the arrestee's person and also the areas within his immediate control.

2. Search all parts of the vehicle that may contain the contraband, without a search warrant:

United States v Ross (456 U.S. 798 (1982) U. S. Supreme Court

You may conduct a warrantless search of any part of a vehicle as long as you have probable cause to believe the object you are looking for is located there. This includes compartments and containers within the vehicle, including the trunk and glove compartment.

*** One could also argue that vehicle occupants ARE containers of the vehicle. ***

As far as passengers, there is only one Federal case that addresses this specific issue:

United States v Anchondo (156 F. 3d 1043 (1998) Tenth Circuit

A warrantless pat-down search of an individual, after drug-sniffing canine had alerted to the presence of drugs in his vehicle, was a valid search incident to the arrest, even though the arrest did not occur until after the pat-down search was performed.

The canine positive alert to the vehicle provided probable cause for the arrest, and since no contraband was located in the vehicle, this increased the chances that the contraband was on the driver's body.

The actual arrest was not too remote, as it occurred immediately after drugs were found on driver's body.

There are other Federal cases that address certain issues of passengers:

Rawlings v Kentucky (448 U.S. 98 (1980) U. S. Supreme Court

A search of an arrestee is legal as a search incident to arrest, despite the fact that the challenged search slightly preceded the arrest. The officers had probable cause to arrest the suspect. During the search incident to arrest, the officers found contraband. It is not important that the search preceded the arrest rather than vice versa.

United States v Banshee (91 F. 3d 99 (1996) Eleventh Circuit

Warrantless search of a vehicle passenger following traffic stop could be justified as search incident to arrest, even though passenger was not actually under arrest at the time of the search. Bulge in passenger's midsection coupled with inconsistent statements given to officer, provided officer with sufficient grounds to conclude that passenger was committing a crime. The fact that passenger was not under arrest at the time of search did not render search incident to arrest doctrine inapplicable.

If there is probable cause for arrest before the search, and contraband is located during the search, and the arrest immediately follows the search, the fact that the suspect was not under arrest at the time of the search does not make the search incident to arrest inapplicable.

Maryland v Pringle (124 S. Ct. 795 (2003) U.S. Supreme Court

Police officer had probable cause to believe that defendant, who was the front seat passenger in a vehicle, committed the crime of possession of cocaine, either solely or jointly with the other passengers of the vehicle. The defendant was one

of three men riding in a vehicle at 3:16a.m., \$763 of rolled-up cash was found in the glove compartment directly in front of the defendant, five plastic baggies of cocaine were behind the backseat armrest and accessible to all three vehicle occupants, and upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or money.

The probable cause standard is a practical, non-technical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, **not legal technicians**, act.

To determine whether an officer had probable cause to arrest an individual, a court will examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of a reasonable police officer, amount to probable cause.

There is also the Terry frisk:

United States v Goddard (312 F. 3d 1360 (2002) Eleventh Circuit

Officer's decision to conduct Terry frisk for weapons did not preclude him from thereafter searching defendant for weapons and drugs, as incident to his lawful arrest based upon probable cause.

Since the arrest of a suspect based upon probable cause is a reasonable intrusion under the Fourth Amendment, search incident to arrest requires no additional justification.

United States v Jackson (390 F. 3d 393 (2004) Fifth Circuit

Fact that bus passenger, on board when officers conducted a canine sniff of bus's interior after giving passengers choice of remaining or disembarking during

sniff, had to disembark to avoid encounter with dog, did not render encounter a seizure.

Reasonable suspicion justified a Terry pat-down of bus passenger who was inside terminal. Officers had conducted a canine sniff of bus's interior and had obtained an alert to an empty seat, making it likely that the passenger was body-carrying drugs.

United States v Sakyi (160 F. 3d 164 (1998) U.S. Court of Appeals Fourth Circuit

In connection with a lawful traffic stop of an automobile, when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, **order the occupants out of the vehicle and pat them down briefly for weapons to ensure the officer's safety and the safety of others.**

United States v Yamba (506 F. 3d 251 (2007) U.S. Court of Appeals Third Circuit

The proper question under the plain feel doctrine is not the immediacy and certainty with which an officer knows an object to be contraband or the amount of manipulation required to acquire that knowledge, but rather what the officer believes the object is by the time he concludes that it is not a weapon.

A Terry search cannot purposely be used to discover contraband, but it is permissible that contraband be confiscated if spontaneously discovered during a properly executed Terry search.

There are other Federal cases that address certain issues of occupants:

Maryland v Wilson (519 U.S. 408 (1997) U.S. Supreme Court

A police officer making traffic stop may order passengers to get out of the car pending completion of stop.

United States v Jamal Williams (419 F. 3d 1029 (2005) Ninth Circuit

An officer effecting a lawful traffic stop may order the driver and passengers out of the vehicle.

Officer could order passenger who voluntarily got out of lawfully stopped vehicle back into the vehicle without violating passenger's Fourth Amendment rights.

Progressive agencies are arresting passengers after a positive canine alert. These agencies are using the cases stated as justification. IF no contraband is located on the passenger during the search incident to arrest, then the passenger is released in an in-field setting, pending further investigation.

If you are not going to arrest passengers, then **minimally, you should conduct a Terry pat-down of them.**